IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

Bail Appl..No. 3103 of 2007()

C.C. 3642/07 OF III METROPOLITAN MAGISTRATE'S COURT
GEORGE TOWN, CHENNAI

PETITIONER/ACCUSED

ALOSHIOUS, DHANYA KALLAMAM,
PUNIYODE P.O., KATTAKKADA,
TRIVANDRUM-695575.

BY ADV. SRI.R.T.PRADEEP

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY THE
DIRECTOR GENERAL OF PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 22/06/2007, A/W. BA 3104 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.Nos. 3103 & 3104 of 2007

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Dated this the 22nd day of June, 2007

O R D E R

Application for anticipatory bail. The petitioners are spouses. Against them allegations have been raised, inter alia, under Section 420 I.P.C. in two separate complaints filed before the Magistrate at Chennai by the common complainant, i.e. the I.C.I.C.I. Bank. The learned Magistrate has taken cognizance. Warrants of arrest are issued against the petitioners. The petitioners apprehend imminent arrest. They pray that directions under Section 438 Cr.P.C. may be issued in favour of the petitioners to save them from vexatious arrest and detention.

2. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. It is also trite that powers under Section 438 Cr.P.C. can be invoked by this Court when the apprehended arrest is within the jurisdiction of this Court. This Court

therefore has jurisdictional competence undisputedly to consider and grant the prayer for anticipatory bail. I am satisfied that subject to appropriate conditions, which will ensure the presence of the petitioners before the court at Chennai, directions under Section 438 Cr.P.C. can be issued in their favour.

3. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioners shall appear before the learned Chief Judicial Magistrate, Trivandrum on or before 2.7.2007 at 11 a.m.

(b) They shall execute bonds for Rs.50,000/- (Rupees fifty thousand only) each undertaking to appear before the III Metropolitan Magistrate's Court, George Town, Chennai, within a period of one month from that date. They shall so appear and seek regular bail from the said court within that period.

© Compliance with these directions shall be reported to the learned Chief Judicial Magistrate, Trivandrum on or before 4.8.2007 and if such compliance is not made, the learned C.J.M. shall proceed under Section 446 Cr.P.C. against the petitioners and their sureties.

(d) If the petitioners do not appear before the learned Chief Judicial Magistrate Trivandrum or the learned Magistrate at Chennai on or before 2.7.2007, these directions shall lapse on 2.7.07 or 2.8.07 as the case may be and the police shall be at liberty thereafter to arrest the petitioners and deal with them in accordance with law.

(e) If the petitioners were arrested prior to their surrender on 2.7.2007 as directed in clause (1) above, they shall be released on bail on their executing bonds for Rs.25,000/- each without any surety undertaking to appear before the learned Chief Judicial Magistrate on 2.7.2007.

(R. BASANT)
Judge

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